

INTRODUCTION

- [1] The Tenant seeks compensation from the Landlord for moving expenses, compensation based upon an unlawful end of the tenancy, and double the security deposit plus interest.

DISPOSITION

- [2] I find that the Landlord must compensate the Tenant for moving expenses, in the amount of \$500.00 and for an unlawful end of the tenancy, in the amount of \$1,000.00. The Landlord must compensate the Tenant double the security deposit plus interest on the original security deposit, in the amount of \$562.72.
- [3] The Landlord must pay the Tenant the total amount of \$2,062.72 by the timeline below.

BACKGROUND

- [4] The Unit was a room rental in a single townhouse with shared facilities (the "Residential Property") that the Landlord has owned for approximately ten years. There are three bedrooms on the main level of the Residential Property and one bedroom in the basement. The Unit includes the smallest bedroom on the main level.
- [5] The Landlord and the Tenant entered into a first written tenancy agreement from October of 2022 to April of 2023. A security deposit of \$275.00 was paid on September 17, 2022. Rent in the amount of \$500.00 was due on the first day of the month. The parties were unable to locate a copy of this first agreement.
- [6] I note that the first agreement would have converted to a month-to-month agreement pursuant to section 52 of the *Residential Tenancy Act* (or the "Act"). However, around April 27, 2023 the parties entered into a second written tenancy agreement (the "Agreement"). The monthly rent remained \$500.00 and the Landlord continued to hold the Tenant's security deposit.
- [7] The Tenant sublet the Unit to another person during the summer of 2023. The Tenant resumed occupation of the Unit around September 1, 2023. The parties disagree whether the Agreement's term was fixed or month-to-month.
- [8] On April 30, 2024 the Tenant moved out of the Unit. The Tenant's position is that she was unlawfully evicted by the Landlord.
- [9] On May 2, 2024 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "Rental Office") seeking compensation for moving expenses and compensation based upon an unlawful end of the tenancy. The Tenant emailed the Landlord a copy of the Application.
- [10] On May 3, 2024 the Tenant removed her personal property from the Unit.
- [11] On May 4, 2024 the Tenant left the Province.
- [12] On September 23, 2024 the Rental Office mailed and emailed the parties notice of a teleconference hearing scheduled for October 23, 2024, along with a copy of the Application.
- [13] On October 22, 2024 the Rental Office emailed the parties an evidence package.
- [14] On October 22, 2024 the Tenant filed an amended Application with the Rental Office adding a claim for double the security deposit (the "Amended Application"). The Tenant emailed the Landlord a copy of the Amended Application.

- [15] The hearing scheduled for October 23, 2024 was adjourned to November 28, 2024 and later adjourned to December 3, 2024.
- [16] On November 26, 2024 the Rental Office emailed the parties a 37-page PDF document (the "Evidence Package" or "EP").
- [17] On December 3, 2024 the Tenant and the Landlord participated in a teleconference hearing. The parties confirmed receipt of the Evidence Package and the parties also confirmed that all of the documents submitted to the Rental Office were included. After the hearing the Tenant provided the Rental Office with an original copy of the Agreement and the Rental Office sent a scanned copy to the Landlord.

ISSUES

- A. Must the Landlord compensate the Tenant for moving expenses and an unlawful end of the tenancy?
- B. Must the Landlord compensate the Tenant double the security deposit plus interest?

ANALYSIS

Tenancy Agreement Form

- [18] On April 8, 2023 the *Residential Tenancy Act* became the law governing residential rental units on Prince Edward Island. Around April 27, 2023 the parties entered the Agreement.
- [19] The Landlord must use tenancy agreement forms that comply with the *Residential Tenancy Act*.
- [20] In particular, subsection 11(2) of the *Act* states the following requirements:

The landlord shall ensure that the tenancy agreement complies with the requirements of this Act and the regulations and includes

- (a) the provisions set out in Division 4;*
- (b) the correct legal names of the landlord and tenant;*
- (c) the address of the rental unit;*
- (d) the date the tenancy agreement is entered into;*
- (e) the address for service and telephone number of the landlord, or the landlord's agent, and the tenant;*
- (f) the services and facilities included in the rent;*
- (g) the amount of rent that was charged, and the services and facilities that were provided, to the previous tenant of the rental unit, unless there was no previous tenant;*
- (h) the name and contact information of any person the tenant is to contact for emergency repairs; and*
- (i) the agreed terms in respect of*
 - (i) the date on which the tenancy starts,*
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis,*
 - (iii) if the tenancy is a fixed-term tenancy, the date on which the term ends,*
 - (iv) the amount of rent payable for a specified period,*
 - (v) the day on which the rent is due and the frequency of payment,*
 - and*

(vi) the amount of any security deposit and the date the security deposit was or is required to be paid.

A. Must the Landlord compensate the Tenant for moving expenses and an unlawful end of the tenancy?

- [21] The parties have different positions regarding the term of the Agreement and the date the tenancy ended.
- [22] The Tenant argued that the term of the Agreement was from September 1, 2023 to May 30, 2026. The Tenant's studies are scheduled to end in 2026. The Tenant provided a copy of the Agreement with this fixed-term. The Tenant argued that the tenancy ended around August 31, 2024, when her subtenant moved out of the Unit.
- [23] The Landlord argued that the Agreement started on September 1, 2023 and it did not expire on a specific date. The Landlord provided a copy of the Agreement showing the start date of September 1, 2023 and no end date. The Landlord argued that the tenancy ended around May 1, or May 4, 2024.
- [24] It is concerning that two different copies of the Agreement were submitted into evidence. On the evidence presented I do not know which version of the Agreement was signed around April 27, 2023.
- [25] However, the result of this decision does not depend on whether the Agreement's term was fixed or month-to-month. Either way, the Landlord required a valid basis for ending the tenancy in accordance with the *Residential Tenancy Act* (subsection 51(1)).
- [26] The Landlord stated that she typically prepares leases that last six or twelve months. I note that fixed-term agreements typically convert to month-to-month agreements by operation of law, in accordance with section 52 of the *Act*.
- [27] A tenant can end a fixed-term or month-to-month tenancy agreement without any reason by informing their landlord in advance. The minimum timelines for a tenant to provide notice are stated in section 55 of the *Act*.
- [28] There is no similar provision in the *Act* for a landlord to end a tenancy agreement without reason.
- [29] The Tenant lived in the Unit from October of 2022 up to the summer of 2023. The Tenant temporarily sublet the Unit during the summer and moved back into the Unit in early September.
- [30] On February 2, 2024 the Landlord text messaged the Tenant regarding a lease renewal. The Landlord stated that the lease was going to expire in February. The Tenant responded that the lease had already been renewed. The Tenant responded further that she was willing to sign a lease renewal and the Tenant made additional requests for the Landlord to provide the Tenant with a new lease agreement.
- [31] The Tenant found a subtenant to rent the Unit for the summer of 2024. The Tenant intended that the subtenant would temporarily occupy the Unit, in a similar manner as the summer of 2023. The Tenant would move out on April 30, 2024 and move back into the Unit in September of 2024.
- [32] The Landlord did not object to this arrangement until the Landlord sent a text message to the Tenant at 6:15 p.m. on April 30, 2024 (EP 22), the date the Tenant was scheduled to move out. The Landlord's message stated:

"Hey [Tenant], About the lease, I wont be signing out any more of that for now. I am still debating whether or not I want to keep renting out that room. You have from now till end of summer to find a new room, which is more than enough time.

Also kindly take all your belongings here with you when leaving..."

[33] At the hearing the Landlord provided the following explanation for this message. The Landlord was travelling for work and the Landlord was not sure if she wanted to rent the Unit in September. The Landlord wanted to avoid the situation where the Tenant was moving back and the Unit was not available for rent. The Landlord stated that the Tenant had more than enough time to find another place to live.

[34] The Landlord never served the Tenant with a standard form eviction notice (Form 4 (A) of Form 4 (B)).

[35] However, I find that the content of the Landlord's message communicated to the Tenant that she had to move out with all of her personal property and find a new rental unit by the end of the summer. I find that this message was an eviction notice without a reason authorized by the *Residential Tenancy Act*. I find that the Tenant was unlawfully evicted as of April 30, 2024, which is the date the tenancy ended.

[36] The Tenant left personal property in the Residential Property. At 6:04 p.m. on Wednesday, May 1, 2024 (EP 23) the Tenant received a text message from the Landlord stating:

"[Tenant] I explicitly asked you to take all your things with you when leaving, you don't stay here anymore, atleast not currently! Your things CANNOT be left here unless I agree to it, and I am NOT agreeing to it!

If by this Friday they are not taken out, they will be thrown out. This is your 48 hour notice!"

[37] The *Residential Tenancy Act* does not contain a 48-hour notice provision for disposing of a tenant's personal property. Instead, landlords are expected to store a tenant's personal property for one month (section 43). A landlord can file an application with the Rental Office seeking disposal of a tenant's personal property.

[38] On May 3, 2024 the Tenant collected her personal property from the Unit and moved it to a U-Haul storage facility. The Tenant left the Province on May 4, 2024.

[39] At the hearing the Landlord stated that she did not want to be responsible for the Tenant's personal property during the summer of 2024. I note that this reason was not communicated to the Tenant in the text message above. Instead, the Landlord's message stated that the Tenant's personal property must be moved because the Tenant does not stay in the Unit anymore.

[40] I must determine the amount of compensation payable by the Landlord to the Tenant due to the unlawful end of the tenancy. The Tenant seeks \$2,000.00 for this claim.

[41] If a landlord ends a tenancy agreement at no fault of the tenant under sections 62, 63 or 64 of the *Act*, then the landlord is required to pay the tenant one month's rent and moving expenses under sections 70 to 72. The moving expenses compensation is limited to the lesser of the actual expenses of the move or one month's rent under subsection 6(1) of the *Residential Tenancy Regulations*.

[42] The Tenant incurred U-Haul storage costs of \$436.76 (4 months multiplied by \$109.19). The Tenant spent five to seven hours moving out of the Residential Property to the U-Haul storage facility using taxi services. I find that the Tenant has established moving expenses equal to one month's rent, in the amount of \$500.00.

- [43] The unlawful end of the tenancy was a highly disruptive experience for the Tenant. The Landlord gave the Tenant minimal notice that her tenancy was ending before the Tenant moved out of the Province.
- [44] The Tenant arranged for a police officer and friends to escort her to the Residential Property for the removal of her personal property. The Tenant visited storage companies to decide on where to move her personal property. The Tenant had to move all of her personal property out of the Residential Property shortly before leaving the Province and find a new place to live for September of 2024. I find that an amount equivalent to two months' rent (\$1,000.00) is appropriate to address the inconvenience to the Tenant for an unlawful end of the tenancy considering that one month's compensation is required when a landlord lawfully ends a tenancy under sections 62, 63 and 64.
- [45] Therefore, the Landlord must pay the Tenant a total of \$1,500.00 for this claim.

B. Must the Landlord compensate the Tenant double the security deposit plus interest?

- [46] For the reasons below, I find that the Landlord must compensate the Tenant double the security deposit plus interest on the security deposit.
- [47] Section 40 of the *Act* addresses the retention and return of a security deposit, stating in part as follows:
- (1) Except as provided in subsection (2) or (3), within 15 days after the date the tenancy ends or is assigned, the landlord shall either*
 - (a) issue payment, as provided in subsection (5), of any security deposit to the tenant with interest calculated in accordance with the regulations; or*
 - (b) make an application to the Director under section 75 claiming against the security deposit.*
 - (2) A landlord may retain from a security deposit an amount that*
 - (a) the Director has previously ordered the tenant to pay to the landlord; and*
 - (b) remains unpaid at the end of the tenancy.*
 - (3) A landlord may retain an amount from a security deposit if*
 - (a) at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant; or*
 - (b) after the end of the tenancy, the Director orders that the landlord may retain the amount.*
 - (4) Where a landlord does not comply with this section, the landlord*
 - (a) shall not make a claim against the security deposit; and*
 - (b) shall pay the tenant double the amount of the security deposit.*
 - (5) For the purposes of clause (1)(a), the landlord shall repay a deposit*
 - (a) by sending a cheque by ordinary or registered mail to an address provided by the tenant, if any;*
 - (b) by giving the deposit personally to the tenant; or*
 - (c) by using any form of electronic payment or transfer to the tenant.*
- [48] The tenancy agreement ended on April 30, 2024. The Landlord did not return any of the \$275.00 security deposit to the Tenant or file an application with the Rental Office within 15 days.

- [49] There are no earlier Rental Office decisions authorizing the Landlord to retain the Tenant's security deposit. At the end of the tenancy the parties did not enter into a written agreement permitting the Landlord to retain the security deposit.
- [50] I note that returning a security deposit electronically is authorized by clause 40(5)(c) of the *Act*.
- [51] The Landlord stated that she was unsure which email address to send the Tenant an e-Transfer with the security deposit.
- [52] On April 30, 2024 the Landlord text messaged the Tenant stating in part as follows (EP 32):
- "I will also need your interact email to refund your deposit back to You."*
- [53] The Tenant did not respond to the Landlord's request for an Interac email address. However, on the facts of this case the Landlord had clear options for attempting to electronically return the Tenant's security deposit.
- [54] The Tenant had previously text messaged the Tenant's email address to the Landlord (EP 23). The Tenant's email address is in the Application and the Amended Application and the Tenant served these documents to the Landlord by email on May 2, 2024 and October 22, 2024. The Tenant had paid the security deposit and rent by e-Transfers to the Landlord. The Tenant stated that during the tenancy the Landlord had previously sent e-Transfers to the Tenant.
- [55] Further, I note that e-Transfers can be sent by text message to a cellular telephone number and the Landlord had the Tenant's number.
- [56] The Landlord ought to have e-Transferred the Tenant the security deposit by email or text message within fifteen days of the end of the tenancy. If the Landlord had any concern regarding the correct e-Transfer recipient information, then the Landlord could have included a password with the payment.
- [57] I find that the Landlord's April 30, 2024 text message to the Tenant did not extend the fifteen-day deadline for returning the security deposit.
- [58] As a result, I find that the Landlord did not comply with the section 40 requirements for returning or retaining a security deposit. Therefore, by operation of law, the Landlord must compensate the Tenant double the security deposit plus interest on the security deposit in accordance with subsection 40(4), as calculated below.

Item	Amount
Security Deposit	\$275.00
Interest (17 SEP 2022 to 11 DEC 2024)	\$12.72
Security Deposit (Double Awarded)	\$275.00
Total	\$562.72

- [59] I note that clause 7 of the Agreement states:
- "You have to give a minimum of two months notice before you move out, or your damage deposit would not be refunded."*
- [60] This clause claims that the Landlord can automatically keep the security deposit in certain circumstances. I note that this clause is invalid because it conflicts with subsection 15(c) of the *Act*, which states:

A landlord shall not

(c) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.

- [61] The Landlord must not prepare tenancy agreements that state the Landlord can automatically retain a security deposit.

CONCLUSION

- [62] The Amended Application is allowed in part.
- [63] The Landlord must pay the Tenant the total amount of \$2,062.72 by the timeline below, calculated as follows:

Item	Amount
Compensation for unlawful eviction	\$1,500.00
Double security deposit plus interest	\$562.72
Net amount	\$2,062.72

- [64] I reiterate to the Landlord that all rental agreements from April 8, 2023 onwards must comply with the *Residential Tenancy Act*.
- [65] The Rental Office's *Form 1 Standard Form of Tenancy Agreement* is available on the Rental Office's website.

IT IS THEREFORE ORDERED THAT

1. The Landlord must pay the Tenant \$2,062.72 by January 17, 2025.

DATED at Charlottetown, Prince Edward Island, this 11th day of December, 2024.

(sgd.) Andrew Cudmore

Andrew Cudmore
Residential Tenancy Officer

NOTICE

Right to Appeal

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.